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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/796,025 | 03/10/2004 | Wataru Tazoe | 503.43626X00 | 2138 |
| 20457 7590 02/03/2009 ANTONELLI, TERRY, STOUT & KRAUS, LLP 1300 NORTH SEVENTEENTH STREET SUITE 1800 ARLINGTON, VA 22209-3873 | | | | |
| EXAMINER | | | | |
| HAND, MELANIE JO | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3761 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,025

Applicant(s)

TAZOE ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-28 is/are pending in the application.
- 4a) Of the above claim(s) 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25, 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed November 20, 2008 regarding claims 25 and 28 only have been fully considered and are persuasive. Claims 25 and 28 are examined on the merits herein, however claims 26 and 27 are drawn to the non-elected species disclosed in Fig. 7 in applicant's disclosure, and are therefore non-elected by original presentation as discussed in detail to follow. It is noted that applicant did not provide persuasive arguments overcoming the rejection of claims 18 and 22, now cancelled, as unpatentable over Lawrence in view of Conkling. In light of this, since claims 25 and 28 are directed to the same embodiment as cancelled claims 18 and 22, examiner's position is that the combined teaching of Lawrence and Conkling also renders newly presented claims 25 and 28 unpatentable.

Election/Restrictions

2. Newly submitted claims 26 and 27 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 26 recites a laminated absorbent material which is a feature of the embodiment of Fig. 7, which is a non-elected species; claim 27 recites a porous absorbent material, which is only supported by the disclosure in association with the embodiment of Figure 7, not the elected species of Fig. 1.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26 and 27 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure as originally filed for a surface in contact with a wearer's skin being a mesh one.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence et al (U.S. Patent No. 5,911,222) in view of Conkling et al (U.S. Patent No. 5,002,541).

With respect to **claims 25,28**: Lawrence teaches an automatic urine disposal device comprising a urine receptacle 10 having an outer sheet 28 having a substantially rectangular shape and having a U-shaped cross-section (Fig. 2a) (Col. 5, lines 65-67), having a width at the middle portion in the longitudinal direction being narrow, so that it is shaped like an hourglass (Fig. 1), and having a gather provided along its periphery at cut out areas 15,16, formed from the

backsheet 28, which is a liquid-impermeable and non-breathable thin sheet made of soft flexible materials, and accommodating a urine absorbent material 24 (Col. 6, lines 58-65) for storing urine; and a top sheet 21 formed as a liquid-permeable non-woven fabric, covering a top surface of said urine absorbent material 24 (Fig. 2a) with said outer sheet and keeping said urine absorbent material highly airtight as well as said outer sheet 28, a sealed urine tank 113 (Fig. 10); interface device 17 having an entrance zone for liquid entering through a porous membrane from absorbent material 24, said entrance zone with said porous material considered herein to function as a drainage port. (Col. 6, lines 1-8); a urine drainage tube 110 for discharging urine through said urine drainage port from said urine absorbent material 24 to said urine tank 113, and made of soft flexible materials (as evidenced by Lawrence's teaching that said drain tube is capable of being hermetically sealed, i.e. it is deformable and thus flexible (Col. 6, lines 8-10); a vacuum pump 112 for decreasing air pressure in said urine tank 113; wherein urine is absorbed into said urine absorbent material 24 through a hole 20 on said top sheet upon wearer's urination, and said urine is discharged from said urine absorbent material 24 through said urine tube 110 to said urine tank 113.

Lawrence does not teach a urine sensor. Conkling teaches a urine collecting device 10 having a urine sensor 92 provided along urine drainage tube 96 and being electrically conductive in responsive to detecting a urination in the vicinity of one end of a urine drainage port 94, said urine sensor 92 detecting wearer's urination and initiating vacuum pump 12. ('541, Col. 4, lines 35-63, Col. 5, lines 36-45) Conkling teaches that the sensor operates to activate a pump 12 for draining the urine from vessel 78, which would allow for increased storage area for incoming urine, therefore it would be obvious to one of ordinary skill in the art to modify the device of Lawrence so as to contain a urine sensor that activates the pump taught by Lawrence to drain said receptacle as taught by Conkling.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761